UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of Veolia ES Technical Solutions, L.L.C., Respondent. Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended.	**CONSENT AGREEMENT AND FINAL ORDER** **Docket No. RCRA-02-2019-7106**

This administrative proceeding for the assessment of a civil penalty and for compliance was commenced pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (collectively referred to as "RCRA" or the "Act"). Section 3008 of RCRA. 42 U.S.C. § 6928, authorizes the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency"), *inter alia*, to "issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both...." On December 28, 2018, Complainant in this proceeding, the-then Director of the Division of Enforcement and Compliance Assistance (now the Director of the Enforcement and Compliance Assurance Division), EPA, Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2019-7106 ("Complaint"), to Respondent Veolia ES Technical Solutions, L.L.C. The Complaint alleges two separate counts against Respondent: **(a)** the failure to equip waste lines connected to tank systems holding hazardous waste with closure devices, and **(b)** the failure to list in a log kept in the operating record of Respondent's facility the identification numbers of equipment subject to RCRA air emissions requirements, 40 C.F.R. Part 264, Subpart BB. Respondent timely served its answer on or about February 21, 2019.

This Consent Agreement and Final Order ("CAFO") is being entered into by the parties pursuant to 40 C.F.R. § 22.18(b). No formal findings of fact or conclusions of law have been made by an administrative or judicial tribunal. The following constitute EPA's findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent, Veolia ES Technical Solutions, L.L.C., is a limited liability company that has existed since at least January 1, 2008 under the laws of the State of Delaware with its principal office located in the State of Illinois.

2. Since January 1, 2008, Respondent has owned and operated a "hazardous waste" (as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.l(a)) storage and treatment facility located at 125 Factory Lane, Middlesex, New Jersey 08846 (the "Middlesex facility") in the operations of which Respondent regularly places hazardous waste in hazardous waste storage tank systems.

3. On or about February 12, 2016, the New Jersey Department of Environmental Protection (NJDEP) issued to Respondent a Class 1 permit modification, bearing Permit Number HWP150001, which permit became effective February 12, 2016 and which is set to expire October 30, 2019.

4. Permit Number HWP150001 constitutes a permit to operate the Middlesex facility as a "hazardous waste storage, treatment and transfer and solid waste transfer facility," and was issued by the NJDEP under authority of New Jersey's authorized hazardous waste program, *i.e.* the permit pertained to those operations and processes at the Middlesex facility governed by the hazardous waste regulations for which the State of New Jersey had been authorized pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b).

5. Permit HWP150001 requires that Respondent, as the permittee, "manage all hazardous waste placed in a tank system in accordance with the applicable requirements of Subparts AA, BB, and CC of 40 C.F.R. Part 264," and each of the following constitutes one such requirement: (a) 40 C.F.R. § 264.1056(a)(1) and (b) 40 C.F.R. § 264.1064(g)(1).

6. One or about April 26, 2016, EPA issued an administrative complaint (bearing docket number RCRA-02-2016-7101) to Respondent, said complaint charging Respondent, in its operations at the Middlesex facility, with two counts of having violated regulatory requirements set forth in 40 C.F.R. Part 264, as follows: (a) the first count alleged Respondent had violated 40 C.F.R. § 264.1052(a) in that it had failed to perform monthly air emissions monitoring as required by said regulation on 20 pumps on 30 occasions between April 2012 and April 2015, a violation of a previously issued NJDEP permit and Permit Number HWP150001; and (b) the second count alleged Respondent had violated another regulatory requirement incorporated into Permit Number HWP 150001 in that it had failed, at the time of a July 2015 EPA inspection, to close drums containing hazardous waste.

7. In September 2016 EPA and Respondent entered into a Consent Agreement to settle the allegations made in the April 2016 complaint.

8. On or about May 22, 23 and 24, 2018, duly designated representatives of EPA conducted a Compliance Evaluation Inspection (the "May 2018 inspection') of the Middlesex

facility; the inspection was conducted under authority of Section 3007 of RCRA, 42 U.S.C. § 6927.

9. Respondent, in its operations of the Middlesex facility, regularly placed hazardous waste that met the specification of 40 C.F.R. § 264.1050(b) in each of two tank systems at the facility.

10. At the time of the May 2018 inspection, and for periods of time before and after, the tank systems at the Middlesex facility in which Respondent had placed hazardous waste had between 50 and 60 open-ended waste lines, *i.e.* Respondent had failed to place a cap, a blind, a flange, a plug or a second valve on said waste lines.

11. At the time of the May 2018 inspection, and for periods of time before and after, with regard to the equipment at the Middlesex facility, Respondent had failed to list in a log kept in the facility's operating record the identification numbers of equipment subject to the requirements of 40 C.F.R. §§ 264.1052 through 264.1060.

CONCLUSIONS OF LAW

1. Section 3008(a)(1) of the Act, 42 U.S.C. § 6928(a)(1) provides, in pertinent part, that "whenever on the basis of any information [EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subchapter III, 42 U.S.C. §§ 6921-6939g], [EPA] may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both...."

2. In accordance with Section 3006(d) of the Act, 42 U.S.C. § 6926(d), a violation of a requirement set forth within Permit Number HWP150001 constitutes a "violation of any requirement of this subchapter [Subchapter III, 42 U.S.C. §§ 6921-6939g]" within the meaning of Section 3008(a) of the Act, 42 U.S.C. § 6928(a).

3. Since at least January 1, 2008, Respondent has been, and continues to be, a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.l(a)).

4. Since January 1, 2008, Respondent has been, and continues to be, the "owner" [as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.l(a))] and "operator" [as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.l(a))] of the Middlesex facility.

5. Since January 1, 2008, Respondent, in its operations at the Middlesex facility, has been, and continues to be, a "generator" [as that term is defined in 40 C.F.R. § 260.10 (1993)(N.J.A.C. 7:26G-4.l(a))] of hazardous waste.

6. Since January 1, 2008, the Middlesex facility has been, and continues to be, a "facility" [as that term is defined in 40 C.F.R. § 260.10(1993) (N.J.A.C. 7:26G-4.1(a))].

7. The requirement set forth in 40 C.F.R. § 264.1056(a)(1), as incorporated into

Permit Number HWP150001, constitutes a requirement of Subchapter III of the Act, 42 U.S.C. §§ 6921-6939g, within the meaning of Section 3008(a) of the Act, 42 U.S.C. § 6928(a).

8. Respondent's failure, as alleged in paragraph 10 of the "Findings of Fact" section, above, constitutes a violation of 40 C.F.R. § 264.1056(a)(1), as incorporated into Permit Number HWP150001, and thus a violation of a requirement of said permit.

9. The requirement set forth in 40 C.F.R. § 264.1064(g)(1), as incorporated into Permit Number HWP150001, constitutes a requirement of Subchapter III of the Act, 42 U.S.C. §§ 6921-6939g, within the meaning of Section 3008(a) of the Act, 42 U.S.C. § 6928(a).

10. Respondent's failure, as alleged in paragraph 11 of the "Findings of Fact" section, above, constitutes a violation of 40 C.F.R. § 264.1064(g)(1), as incorporated into Permit Number HWP150001, and thus a violation of a requirement of said permit.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 3008(a) of RCRA, as amended, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), to prosecute this administrative enforcement action in a 40 C.F.R. Part 22 proceeding; (b) neither admits nor denies the "Findings of Fact" or "Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it might possess under RCRA or the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order ("CA/FO") shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. By entering this Consent Agreement, Respondent hereby certifies, to the best of the knowledge and information of the person executing this Consent Agreement on behalf of Respondent, that the operations at the Middlesex facility comply with the provisions and requirements of Permit Number HWP150001. Respondent shall maintain such compliance.

2. Respondent shall pay a civil penalty to EPA in the amount of **FIFTY-SEVEN THOUSAND ($57,000.00) DOLLARS,** for the violations as set forth herein. Said amount must be *received* by EPA (at the address or account specified below) within 30 calendar days (all

subsequent references to "days" mean "calendar days") of the date the Regional Administrator of EPA, Region 2, executes the Final Order accompanying this Consent Agreement (the date by which payment must be received is henceforth referred to as the "due date").

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic funds transfer (EFT). If payments is made by cashier's check or by certified check, such check shall be made payable to the **"Treasurer, United States of America,"** and shall be identified with a notation thereon listing the following: ***In re Veolia ES Technical Solutions, L.L.C.*, Docket Number RCRA-02-2019-7106**. If payment is made by either form of check, such payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when such payment in accordance with this paragraph is being made:

a. Amount of Payment
b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
d. Federal Reserve Bank of New York ABA routing number: **021030004**
e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
f. Name of Respondent: **Veolia ES Technical Solutions, L.L.C.**
g. Case docket number: **RCRA-02-2019-7106**

3. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

4. Furthermore, if the required payment is not received on or before the date when such payment is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of $15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date any such payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which such payment was required hereto to have been made.

5. The civil penalty provided for in this section (including any payment for interest and late handling charge that become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and thus does not constitute a deductible expenditure for purposes of federal law.

6. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed consent agreement and accompanying executed final order:

John P. Schantz, Environmental Health & Safety Manager
Veolia
1 Eden Lane
Flanders, New Jersey 07836

Delivery of the fully executed document to the address listed in this paragraph shall constitute Respondent's receipt and acceptance of this CAFO.

7. Respondent consents to service upon the representative set forth in paragraph 6 of this section, above, by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2.

8. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the provisions of this Consent Agreement (or related to it) shall be sent to:

John Wilk, Compliance Officer
RCRA Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

Unless the EPA contact listed above in this paragraph is subsequently notified otherwise in writing, EPA shall address any future written communications relating to this matter (including any correspondence related to payment of the penalty) to the addressee listed above in paragraph 6 of this section.

9. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest or handling charge, shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with the provisions and requirements of NJDEP Permit Number HWP150001 or any subsequent hazardous waste permit for the Middlesex facility.

10. Respondent has read the Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further

consents to making payment of the entire amount of the civil penalty in accordance with the terms and the schedule set forth above.

11. Full payment of the penalty amount set forth above ($57,000) in accordance with the terms and conditions set forth in this Consent Agreement, as well as any interest or late payment handling charges that accrue, shall only resolve Respondent's liability for federal civil penalties for the facts and violations set forth in paragraphs 10 and 11 of the "Findings of Fact" section, above, and paragraphs 8 and 10 of the "Conclusions of Law" section, above. Nothing in this document is intended or is to be construed to affect the authority of EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law.

12. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by EPA or the United States on behalf of EPA: (a) to enforce this CAFO; or b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirements set forth in this document will be considered a violation of this CAFO and may subject Respondent to an action, suit or proceeding by EPA (or the United States on behalf of EPA) to enforce any of the terms and provisions of this Consent Agreement.

13. Beginning six months after the effective date of this CAFO, and continuing thereafter on a quarterly basis (*i.e.* after the end of every subsequent three-month period) for a period of two years thereafter, Respondent shall conduct a self-audit, which shall be conducted pursuant to the following:

a. Respondent shall designate an employee fully familiar with the requirements of 40 C.F. R. Part 264, Subpart BB (or, if unable to find such an employee, then Respondent will train an employee to be fully familiar with the requirements of 40 C.F.R. Part 264, Subpart BB) (henceforth, said employee referred to as the "designated employee") to conduct a self-audit at the Middlesex facility in accordance with the provisions set forth in this paragraph. The designated employee shall not be an employee otherwise involved on a daily basis in ascertaining whether the equipment and processes at the Middlesex facility are in compliance with the requirements of Subpart BB;

b. The designated employee shall, at least once every three months, conduct unannounced inspections to assess the equipment at the Middlesex facility subject to the requirements of Subpart BB to ensure said equipment and associated processes are being operated and monitored in compliance with the requirements of Subpart BB;

c. Such assessments should be similar to that utilized or engaged in by any employee of Respondent who is principally responsible for monitoring equipment and processes at the Middlesex facility to ensure compliance with applicable Subpart BB requirements;

d. The designated employee's quarterly monitoring shall ensure that: (1) new pieces of equipment at the Middlesex facility are properly integrated into Respondent's Subpart BB equipment program; (2) pieces of equipment at the Middlesex facility that are taken out of service are removed from the Subpart BB equipment program; and (3) all other necessary and appropriate measures have been taken to ensure the Middlesex facility's continuing and ongoing compliance with applicable Subpart BB requirements;

e. Within ten (10) business days following each such quarterly inspection, the designated employee shall provide a written report (to the addressee listed in paragraph 8 of this section, above), and each such report shall detail instances of non-compliance with applicable Subpart BB requirements, what Respondent has been doing to rectify any such Subpart BB non-compliance, a schedule indicating when full Subpart BB compliance has been (or will be) attained, and the measures taken to attain such full compliance.

14. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce any of the terms and provisions of this Consent Agreement.

15. EPA's entering into this Consent Agreement is predicated upon Respondent not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency. If any material fact has been misrepresented or concealed, EPA may take such further action as is authorized by law.

16. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statute for any violation(s) of law.

17. If any term or condition of this Consent Agreement is held invalid or is stayed by a court of competent jurisdiction, such action is not intended, and is not to be construed, to negate, abrogate or otherwise affect the validity and Respondent's obligation to comply with, and to maintain such compliance, with the remaining terms and conditions of the Consent Agreement.

18. Each party shall bear its own costs and fees in connection with this proceeding.

19. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and to bind the parties on behalf of which each signatory has executed this Consent Agreement.

20. This Consent Agreement and its accompanying Final Order shall be fully binding upon the parties and their respective officers, directors, employees, successors and/or assigns (as applicable).

In the Matter of Veolia ES Technical Solutions, L.L.C.
Docket Number RCRA-02-2019-7106

RESPONDENT:

BY: _____
(Signature)

NAME: Kevin Anderson
(Please Print)

TITLE: General mgr.

DATE: 6/21/19

COMPLAINANT:

_____
~~Dore~~ LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

DATE: JUN 25 2019

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Veolia ES Technical Solutions, L.L.C.*, bearing Docket Number RCRA-02-2019-7106. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered into pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

PETER D. LOPEZ
Regional Administrator
United States Environmental Protection Agency – Region 2

DATE: 7/1/19

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 25 2019

MEMORANDUM

SUBJECT: ***In the Matter of Veolia ES Technical Solutions, L.L.C.***
Docket No. RCRA-02-2019-7106

FROM: Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Eric Schaaf, Regional Counsel
Office of Regional Counsel

TO: Peter D. Lopez
Regional Administrator

Attached please find for your signature a Consent Agreement and Final Order against respondent Veolia ES Technical Solutions, L.L.C., a large and sophisticated entity specializing in the management of waste, both hazardous and non-hazardous, that serves more than 550 communities throughout North America, for the company's failure at its Middlesex, New Jersey facility to comply with two RCRA air emissions requirements incorporated into its State-issued operating permit.

This administrative enforcement action commenced pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. We recommend that you accept the settlement agreement because, in concluding the proceeding without extensive administrative litigation, it expeditiously achieves EPA's objectives in enforcing the RCRA 40 C.F.R. Part 264, Subpart BB, air emissions requirements. Enforcing these RCRA rules is currently an Agency national compliance initiative; a number of Veolia facilities in other regions have recently been cited for Subpart BB violations. Under the proposed settlement, Respondent is required to pay a civil penalty of $57,000 and is obligated to perform a self-audit every three months over a two-year period to help ensure ongoing compliance with the Subpart BB regulations. During settlement negotiations, EPA inquired whether Respondent wished to perform a Supplemental Environmental Project, but it declined.

If you find this document to be satisfactory, please sign the Final Order at the end and return it to the Waste and Toxic Substances Branch for filing and mailing to Respondent.

The following explains the facts considered by EPA in arriving at the proposed settlement in this action.

BACKGROUND: RESPONDENT AND ITS OPERATIONS

Respondent is a Delaware limited liability company that owns and controls a facility in Middlesex, New Jersey. The Middlesex facility operates as a hazardous waste storage, treatment and transfer facility under a permit issued by the New Jersey Department of Environmental Protection (NJDEP), the most recent one having been issued in February 2016. One condition of these permits is that Respondent operate the facility in compliance with the 40 C.F.R. Part 264, Subpart BB, regulations. As part of its operations, Respondent generates hazardous waste and then places such waste in tanks for storage. Based on a May 2018 inspection of the Middlesex facility and the responses to a follow-up August 2018 information request letter, Region 2 learned Respondent was in violation of two specific requirements of 40 C.F.R. Part 264, Subpart BB (as expressly incorporated into its February 2016 NJDEP operating permit): **(a)** Respondent had failed to place closure devices, either a cap, a blind, a flange, a plug or second valve, on pipes connected to tanks storing the hazardous waste, a violation of 40 C.F.R. § 264.1056(a)(1); and **(b)** Respondent had failed to list in a log required to be kept in the facility's operating record the identification numbers of equipment subject to the requirements of 40 C.F.R. § 264.1052 through 40 C.F.R. § 264.1060 [these provisions constitute the Subpart BB regulations]. Each regulatory violation constitutes, pursuant to Section 3006(d) of RCRA, 42 U.S.C. § 6926(d), a violation of Subchapter III of RCRA, 42 U.S.C. § 6921-6939g.

Accordingly, on or about December 28, 2018 Region 2 issued an administrative enforcement complaint alleging these two violations. The complaint sought a penalty of $76,200. Respondent timely filed its answer on or about February 21, 2019. While not addressing the question of liability, Respondent was "contesting the proposed penalty," specifically challenging EPA's determination of the gravity-based penalty for both counts. Respondent argued for a significant reduction in the amount sought for each of the two counts, providing arguments why each penalty should be greatly reduced. Respondent also requested a formal hearing to challenge EPA's penalty determination.

Respondent has a history of prior violations of RCRA at this facility. In April 2016, Region 2 issued a complaint to Respondent, and that matter was settled in a September 2016 consent agreement and final order. In that proceeding Respondent was cited for: **(a)** the failure to perform monthly air emissions monitoring as required by 40 C.F.R. § 264.1052(a) on 20 pumps on 30 separate occasions between April 2012 and April 2015, a violation of said regulation (as incorporated in the then-operative NJDEP permit); and **(b)** the failure, observed during a July 2015 inspection of Respondent's Middlesex facility, to have closed drums containing hazardous waste, a violation of 40 C.F.R. § 264.173(a) (as also incorporated into the then-operative permit). While the first violation was of a Subpart BB requirement, the second violation was not.

The parties held an informal settlement conference on March 20, 2019 on the December 2018 complaint. After extended discussion subsequent to their meeting, the parties reached an agreement in principle, providing for the payment of a $57,000 penalty and injunctive relief.

ORIGINAL PENALTY CALCULATION

The complaint included a proposed penalty of $76,200 for the two counts, calculated in accordance with EPA's "2003 RCRA Civil Penalty Policy" (the "RCRA penalty policy"). The calculation included the relevant inflation adjustments as of the time the complaint was issued. For each violation, the maximum statutory penalty per day per violation at that time was $97,229. The penalty was calculated as follows:

For the first count, the "Potential for Harm" was determined to be "MAJOR" because Respondent's failure to equip between 50 and 60 open-ended hazardous waste lines with a closure device significantly increased the risk and likelihood of emissions of hazardous waste. The "EXTENT OF DEVIATION" was also determined to be "MAJOR" inasmuch as Respondent had equipped those lines with neither the regulatorily-prescribed closure devices nor any other type of closure device. Using the RCRA penalty policy matrix, as updated for inflation, yielded a gravity-based penalty of approximately $42,300. Because of Respondent's 2016 RCRA violations at the Middlesex facility, this amount was then increased by 25%, resulting in a penalty figure of $52,900.

For the second count, the Region determined that "Potential for Harm" was "MODERATE" because Respondent's failure to identify equipment subject to the Subpart BB requirements increased the risk and likelihood that its leak detection and repair program could misidentify regulated equipment and delay any requisite leak repairs; it was not deemed "MAJOR" because Respondent informed EPA that it was monitoring the equipment. The "EXTENT OF DEVIATION" was classified as "MAJOR" because Respondent failure to identify numerous pumps and valves constituted a substantial level of non-compliance with a regulatory requirement. Using the RCRA penalty policy matrix (as in count 1, updated for inflation) yielded a gravity-based penalty of approximately $18,600, which was also increased 25% because of the 2016 Middlesex facility violations. This resulted in a penalty assessment of $23,300 for the second count.

EPA determined that the economic benefit of each of the violations was insignificant, and EPA had no further information at the time the penalty calculations were made that would warrant any additional adjustments.

SETTLEMENT TERMS

In addition to agreeing to pay a $57,000 civil penalty, the company in the settlement certifies that the Middlesex facility is in compliance with its New Jersey operating permit (which, as noted, incorporates the Subpart BB requirements). The consent agreement obligates Respondent to maintain such compliance. Significantly, the settlement also requires Veolia to conduct for two years, on a quarterly basis, a self-audit that is intended to ensure the facility's equipment and associated processes are being operated and monitored in compliance with the Subpart BB requirements and that steps are promptly taken to correct any instances of non-compliance. Respondent is required within 10 business days of each quarterly audit to report to EPA any instances of non-compliance and the measures it is/will be undertaking to address such non-compliance. This self-auditing provision is consistent with the type of relief EPA headquarters has urged regions to seek in cases that are part of the national compliance initiative. This relief also addresses the fact that the company has been found to have issues complying with Subpart BB requirements at this and other facilities.

REASONS FOR REDUCING IN PENALTY AMOUNT IN SETTLEMENT

In this settlement, Regional staff recommend reducing the penalty from $76,200 to $57,000 for the following reasons:

Respondent's Cooperation

Under the 2003 RCRA penalty policy, a 10 % reduction can be made to the gravity penalty amount if a respondent cooperates with the government during the investigation and the enforcement case.

Respondent cooperated fully with EPA during the inspection and readily provided access to company records during that time; during the settlement process, it cooperated fully in working with Regional staff in trying to reach a negotiated settlement. For example, it readily admitted its errors regarding the Subpart BB violations (it did not dispute liability, either in settlement conference or its answer), and it was prompt in responding to telephone and e-mail inquiries. Through its cooperative and straightforward attitude, Respondent exhibited a concern both to settle the matter expeditiously and ensure such violations not be repeated, and to that end it proactively worked with EPA personnel to reach an agreement and to undertake actions to maintain long-term compliance. EPA staff believes that Respondent's cooperation merits a reduction of 10% ($7,620).

Litigation Risks/Avoided Litigation Burdens

The RCRA penalty policy allows proposed penalties to be reduced where significant litigation risks exist. While Respondent did not contest liability, it is unclear EPA would prevail at a hearing in obtaining the full amount of penalty that the complaint seeks. An administrative law judge (ALJ) might reduce the size of the penalty EPA is seeking at hearing. EPA has no firm evidence that any environmental harm resulted from the violations, and an ALJ might reduce the penalty in light of one or more of the following facts: **(a)** EPA does not have proof that actual releases occurred from the open-ended lines; **(b)** assuming releases did occur, EPA does not have evidence as to which chemicals were released or how much had been released; **(c)** the open-ended lines were of small diameter, and the amount of release for the one day on which EPA has proof the lines were uncapped likely would not be significant; **(d)** assuming releases did occur, they might have been in gas and not liquid form, and Respondent has maintained the pressure within the system was at normal ambient (atmospheric) pressure, thus precluding large amounts of gasses from escaping; and **(e)** assuming releases did occur, Respondent moved quickly to limit any such releases, having promptly capped the lines following the inspection. Under the penalty policy, where the Agency has determined that significant litigative risk exists, it may also take into account litigation burdens in litigating a case that are avoided by entering into a settlement. Given these considerations, Regional staff believe a further 15% penalty reduction ($11,430), taking account of litigation risks and avoided litigation burdens, is warranted.
Adding the reduction amounts ($7,620 and $11,430) yields $19,050, which, when subtracted from the initially proposed $76,200 penalty, in turn yields $57,150 (essentially the amount for which the parties have agreed in principle to settle).

CONCLUSION

For all these reasons, we recommend your acceptance of this settlement which would require the company to comply, perform a self-audit and pay a $57,000 penalty. We request that you sign the Final Order ratifying the settlement for the reasons outlined above.

Attachment